

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

OSCAR ADRIAN MARQUEZ,

Petitioner,

v.

No. 3:20-cv-01245-SB

JOSIAS SALAZAR,

OPINION AND ORDER

Respondent.

MOSMAN, J.,

On September 25, 2020, Magistrate Judge Patricia Sullivan issued her Findings and Recommendation (F. & R.) [ECF 4]. Judge Sullivan recommended that I dismiss this case without prejudice and decline to issue a certificate of appealability. Upon review, I agree with Judge Sullivan and DISMISS this case without prejudice.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of

the magistrate judge as to those portions of the F. & R. to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F. & R. depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F. & R. 28 U.S.C. § 636(b)(1)(C).

CONCLUSION

Upon review, I agree with Judge Sullivan's recommendation and I ADOPT the F. & R. [ECF 4] as my own opinion. I decline to issue a certificate of appealability because Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2). The case is DISMISSED without prejudice.

IT IS SO ORDERED.

DATED this 15th day of December, 2020.

Michael W. Mosman
MICHAEL W. MOSMAN
United States District Judge